

AMENDED IN ASSEMBLY MAY 27, 2011

AMENDED IN ASSEMBLY MAY 5, 2011

AMENDED IN ASSEMBLY APRIL 13, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

## ASSEMBLY BILL

**No. 165**

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**Introduced by Assembly Member Lara**  
**(Coauthors: Assembly Members ~~Alejo, Davis, Roger Hernández,~~**  
**~~and John A. Pérez Alejo, Campos, Davis, Hall, Roger Hernández,~~**  
**~~Mitchell, John A. Pérez, and Solorio)~~**

January 20, 2011

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An act to amend Sections 14501, 35186, and 41020 of, and to add Article 5.5 (commencing with Section 49010) to Chapter 6 of Part 27 of Division 4 of Title 2 of, the Education Code, and to amend Section 905 of the Government Code, relating to pupil fees.

### LEGISLATIVE COUNSEL'S DIGEST

AB 165, as amended, Lara. Pupil fees.

(1) Existing law requires the Legislature to provide for a system of common schools by which a free school shall be kept up and supported in each district. Existing law prohibits a pupil enrolled in school from being required to pay a fee, deposit, or other charge not specifically authorized by law.

This bill would prohibit a school district, school, ~~or other entity working under the supervision of, or in coordination with, a district or school~~ *charter school, or county office of education* from imposing a pupil fee, as defined, for participation in educational activities, as defined, as specified. The bill would provide that this prohibition is not to be interpreted to prohibit solicitation of voluntary donations, voluntary

participation in fundraising activities, or school districts and schools from providing pupils prizes or other recognition for voluntarily participating in fundraising activities. The bill would specify that these provisions apply to all public schools, including, but not limited to, charter schools and alternative schools, are declarative of existing law, and should not be interpreted to prohibit a school district or school from imposing a fee, deposit, or other charge otherwise allowed by law.

~~The bill would require the governing board or body of a school district, county office of education, or charter school a superintendent of a school district, county superintendent of schools, or governing body of a charter school, commencing with the 2011–12 fiscal year, to hold a public hearing or hearings, as specified, to make a determination, through a resolution, as to whether unlawful pupil fees have been, or are being, charged within its jurisdiction. If the governing board or body determines that an unlawful pupil fee was charged, the bill would require the governing board or body to describe specified things in the resolution determine whether an unlawful pupil fee has been, or is being, charged. If the superintendent of a school district, county superintendent of schools, or governing body of a charter school makes this determination, the bill would require it to present the determination at a public hearing of the applicable governing board or body at which the governing board or body would be required to identify the nature of the violation and take action to comply with specified repayment requirements. The bill would require the hearing to meet specified requirements.~~ By imposing additional duties on local educational agencies, this bill would impose a state-mandated local program.

(2) Existing law requires the Controller, in consultation with the Department of Finance and the State Department of Education, to develop a plan to review and report on financial and compliance audits, and with representatives of other entities, to recommend the statements and other information to be included in the audit reports filed with the state by local educational agencies, and to propose the content of an audit guide.

This bill would require a compliance audit, commencing with audits of the 2011–12 fiscal year, to include the verification of compliance with the prohibition against the imposition of pupil fees for participation in educational activities in violation of specified law. Notwithstanding specified law, the bill would require this verification to be added to the audit guide commencing with audits of the 2011–12 fiscal year. The bill would also allow for the adoption of emergency regulations to

achieve this goal and would require charter schools to be subject to those audits to ensure compliance with the prohibition against the imposition of unlawful pupil fees.

(3) Existing law requires a school district to use its uniform complaint process to help identify and resolve any deficiencies related to instructional materials, emergency or urgent facilities conditions that pose a threat to the health and safety of pupils or staff, teacher vacancy or misassignment, and intensive instruction and services provided to pupils who have not passed one or both parts of the high school exit examination after the completion of grade 12. Existing law provides certain complainants the right to file an appeal to the Superintendent of Public Instruction, who is required to provide a written report to the State Board of Education that describes the basis for the complaint and, as appropriate, proposes a remedy. A notice regarding the appropriate subjects of a complaint is required to be posted in each classroom in each school in the school district and a complaint regarding those deficiencies is required to be filed with the principal of the school or his or her designee, except as specified.

This bill also would require a school district and a charter school to use its uniform complaint process to help identify and resolve any deficiencies related to the imposition of pupil fees for participation in educational activities, as those terms are defined. The bill would also provide persons with a complaint regarding the imposition of pupil fees the right to file an appeal to the Superintendent and would require the Superintendent to provide the written report to the state board and the complainant no later than 30 working days after the appeal was received by the Superintendent. If the report finds a violation, the bill would require the Superintendent to require the offending school district, charter school, or school to fully reimburse all affected pupils, parents, or guardians. The bill would also require the classroom notice to include certain information about the prohibition against charging pupil fees for participation in educational activities. The bill would require a school district, county office of education, and charter school to establish local policies and procedures, post notices, and implement the uniform complaint process provisions regarding the imposition of pupil fees for participation in educational activities by January 1, 2012. By imposing additional duties on local educational agencies, this bill would impose a state-mandated local program.

(4) Existing law requires a county superintendent of schools to provide for an audit of all funds under his or her jurisdiction and requires

the governing board of a local educational agency to either provide for an audit of the books and accounts of the local educational agency or make arrangements with the county superintendent of schools having jurisdiction over the local educational agency to provide for that auditing. Existing law requires a county superintendent of schools to be responsible for reviewing the audit exceptions contained in an audit of a local educational agency under his or her jurisdiction related to specified topics, and determining whether the exceptions were either corrected or an acceptable plan of correction was developed. Existing law requires the county office of education to review certain audit exceptions upon submission and receipt of a final audit report. Existing law requires the Superintendent of Public Instruction to be responsible for ensuring that local educational agencies have either corrected or developed plans of correction for specified audit exceptions.

This bill, commencing with the 2011–12 audit of local educational agencies, would require the county superintendent of schools to also include in the review of audit exceptions those audit exceptions related to the imposition of pupil fees for participation in educational activities in violation of specified law, and to determine whether the exceptions are either corrected or an acceptable plan of correction is developed. The bill would prohibit an audit exception related to the imposition of unlawful pupil fees from being deemed corrected until the school district, county office of education, or charter school fully reimburses all affected parents, guardians, and pupils, ~~with interest~~. The bill would also require the county office of education to review audit exceptions relating to the imposition of unlawful pupil fees. If, in an audit for a subsequent year, the auditor finds an uncorrected or new audit exception related to the imposition of unlawful pupil fees, the bill would require the auditor to make a specified disclosure and would require the Superintendent to withhold certain payments to the school district, county office of education, or charter school until they provide reimbursement, as specified. By imposing additional duties on local educational agencies, this bill would impose a state-mandated local program.

(5) Existing law excepts certain claims from the requirement that all claims for money or damages against local public entities be presented in accordance with specified law.

This bill would additionally except specified claims for reimbursement of pupil fees for participation in educational activities.

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 14501 of the Education Code is amended  
2 to read:

3 14501. (a) As used in this chapter, “financial and compliance  
4 audit” shall be consistent with the definition provided in the  
5 “Standards for Audits of Governmental Organizations, Programs,  
6 Activities, and Functions” promulgated by the Comptroller General  
7 of the United States. Financial and compliance audits conducted  
8 under this chapter shall fulfill federal single audit requirements.

9 (b) As used in this chapter, “compliance audit” means an audit  
10 that ascertains and verifies whether or not funds provided through  
11 apportionment, contract, or grant, either federal or state, have been  
12 properly disbursed and expended as required by law or regulation  
13 or both and includes the verification of each of the following:

14 (1) The reporting requirements for the sufficiency of textbooks  
15 or instructional materials, or both, as defined in Section 60119.

16 (2) Teacher misassignments pursuant to Section 44258.9.

17 (3) The accuracy of information reported on the School  
18 Accountability Report Card required by Section 33126. The  
19 requirements set forth in paragraphs (1) and (2) and this paragraph  
20 shall be added to the audit guide requirements pursuant to  
21 subdivision (b) of Section 14502.1.

22 (4) (A) Compliance with Article 5.5 (commencing with Section  
23 49010) of Chapter 6 of Part 27 of Division 4 of Title 2 and Section  
24 5 of Article IX of the California Constitution, commencing with  
25 audits of the 2011–12 fiscal year.

26 (B) The requirements of this paragraph shall be added to the  
27 audit guide adopted pursuant to Section 14502.1 commencing with  
28 audits of the 2011–12 fiscal year.

(C) Notwithstanding the timelines specified in subdivision (b) of Section 14502.1, and to ensure that the requirements of this paragraph are added to the audit guide for audits of the 2011–12 fiscal year, the process for adopting emergency regulations set forth in Section 11346.1 of the Government Code may be followed.

(D) Notwithstanding any other law, and commencing with audits of the 2011–12 fiscal year, charter schools shall be subject to audits conducted pursuant to Section 41020 to ensure compliance with the requirements of this paragraph.

SEC. 2. Section 35186 of the Education Code is amended to read:

35186. (a) A school district shall use the uniform complaint process it has adopted as required by Chapter 5.1 (commencing with Section 4600) of Division 1 of Title 5 of the California Code of Regulations, with modifications, as necessary, to help identify and resolve any deficiencies related to instructional materials, emergency or urgent facilities conditions that pose a threat to the health and safety of pupils or staff, teacher vacancy or misassignment, intensive instruction and services provided pursuant to Section 37254 to pupils who have not passed one or both parts of the high school exit examination after the completion of grade 12, and the imposition of pupil fees for participation in educational activities. A charter school shall use the uniform complaint process it has adopted as required by Chapter 5.1 (commencing with Section 4600) of Division 1 of Title 5 of the California Code of Regulations, with modifications, as necessary, to help identify and resolve any deficiencies related to the imposition of pupil fees for participation in educational activities.

(1) A complaint may be filed anonymously. A complainant who identifies himself or herself is entitled to a response if he or she indicates that a response is requested. A complaint form shall include a space to mark to indicate whether a response is requested. If Section 48985 is otherwise applicable, the response, if requested, and report shall be written in English and the primary language in which the complaint was filed. All complaints and responses are public records.

(2) The complaint form shall specify the location for filing a complaint. A complainant may add as much text to explain the complaint as he or she wishes.

1 (3) Except as provided pursuant to paragraph (4), a complaint  
2 shall be filed with the principal of the school or his or her designee.  
3 A complaint about problems beyond the authority of the school  
4 principal shall be forwarded in a timely manner but not to exceed  
5 10 working days to the appropriate school district or charter school  
6 official for resolution.

7 (4) A complaint regarding any deficiencies related to intensive  
8 instruction and services provided pursuant to Section 37254 to  
9 pupils who have not passed one or both parts of the high school  
10 exit examination after the completion of grade 12 shall be  
11 submitted to the district official designated by the district  
12 superintendent. A complaint may be filed at the school district  
13 office, or it may be filed at the schoolsite and shall be immediately  
14 forwarded to the designee of the district superintendent.

15 (b) The principal or the designee of the district superintendent  
16 or charter school, as applicable, shall make all reasonable efforts  
17 to investigate any problem within his or her authority. The principal  
18 or designee of the district superintendent or charter school shall  
19 remedy a valid complaint within a reasonable time period but not  
20 to exceed 30 working days from the date the complaint was  
21 received. The principal or designee of the district superintendent  
22 or charter school shall report to the complainant the resolution of  
23 the complaint within 45 working days of the initial filing. If the  
24 principal makes this report, the principal shall also report the same  
25 information in the same timeframe to the designee of the district  
26 superintendent or charter school.

27 (c) A complainant not satisfied with the resolution of the  
28 principal or the designee of the district superintendent or charter  
29 school has the right to describe the complaint to the governing  
30 board of the school district or the governing body of the charter  
31 school at a regularly scheduled hearing of the governing board or  
32 body. As to complaints involving a condition of a facility that  
33 poses an emergency or urgent threat, as defined in paragraph (1)  
34 of subdivision (c) of Section 17592.72, or complaints involving  
35 the imposition of pupil fees for participation in educational  
36 activities, a complainant who is not satisfied with the resolution  
37 proffered by the principal or the designee of the district  
38 superintendent or charter school has the right to file an appeal to  
39 the Superintendent, who shall provide a written report to the state  
40 board and the complainant no later than 30 working days after the

1 date the appeal was received by the Superintendent describing the  
2 basis for the complaint and, as appropriate, a proposed remedy for  
3 the issue described in the complaint. If the report finds that a school  
4 district, charter school, or school has unlawfully imposed a pupil  
5 fee for participation in educational activities, the Superintendent  
6 shall require the school district, charter school, or school to fully  
7 reimburse all affected pupils, parents, or guardians ~~with interest,~~  
8 ~~as calculated in subparagraph (C) of paragraph (3) of subdivision~~  
9 ~~(i) of Section 41020.~~

10 (d) A school district or charter school shall report summarized  
11 data on the nature and resolution of all complaints on a quarterly  
12 basis to the county superintendent of schools and the governing  
13 board of the school district or the governing body of the charter  
14 school. The summaries shall be publicly reported on a quarterly  
15 basis at a regularly scheduled meeting of the governing board of  
16 the school district or the governing body of the charter school. The  
17 report shall include the number of complaints by general subject  
18 area with the number of resolved and unresolved complaints. The  
19 complaints and written responses shall be available as public  
20 records.

21 (e) The procedure required pursuant to this section is intended  
22 to address all of the following in school districts, and the  
23 complaints described in paragraph (5) in charter schools:

24 (1) A complaint related to instructional materials as follows:

25 (A) A pupil, including an English learner, does not have  
26 standards-aligned textbooks or instructional materials or  
27 state-adopted or district-adopted textbooks or other required  
28 instructional material to use in class.

29 (B) A pupil does not have access to instructional materials to  
30 use at home or after school.

31 (C) Textbooks or instructional materials are in poor or unusable  
32 condition, have missing pages, or are unreadable due to damage.

33 (2) A complaint related to teacher vacancy or misassignment  
34 as follows:

35 (A) A semester begins and a teacher vacancy exists.

36 (B) A teacher who lacks credentials or training to teach English  
37 learners is assigned to teach a class with more than 20-percent  
38 English learner pupils in the class. This subparagraph does not  
39 relieve a school district from complying with state or federal law  
40 regarding teachers of English learners.



1 (C) A teacher is assigned to teach a class for which the teacher  
2 lacks subject matter competency.

3 (3) A complaint related to the condition of facilities that pose  
4 an emergency or urgent threat to the health or safety of pupils or  
5 staff as defined in paragraph (1) of subdivision (c) of Section  
6 17592.72 and any other emergency conditions the school district  
7 determines appropriate and the requirements established pursuant  
8 to subdivision (a) of Section 35292.5.

9 (4) A complaint related to the provision of intensive instruction  
10 and services pursuant to paragraphs (4) and (5) of subdivision (d)  
11 of Section 37254.

12 (5) A complaint related to the imposition of pupil fees for  
13 participation in educational activities.

14 (f) (1) In order to identify appropriate subjects of complaint, a  
15 notice shall be posted in each classroom in each school in the  
16 school district notifying parents, guardians, pupils, and teachers  
17 of the following:

18 (A) There should be sufficient textbooks and instructional  
19 materials. For there to be sufficient textbooks and instructional  
20 materials each pupil, including English learners, must have a  
21 textbook or instructional materials, or both, to use in class and to  
22 take home.

23 (B) School facilities must be clean, safe, and maintained in good  
24 repair.

25 (C) There should be no teacher vacancies or misassignments as  
26 defined in paragraphs (3) and (5) of subdivision (h).

27 (D) Pupils shall not be charged fees, including security deposits,  
28 or be required to purchase materials or equipment, to participate  
29 in a class or an extracurricular activity.

30 (E) Pupils who have not passed the high school exit examination  
31 by the end of grade 12 are entitled to receive intensive instruction  
32 and services for up to two consecutive academic years after  
33 completion of grade 12 or until the pupil has passed both parts of  
34 the high school exit examination, whichever comes first, pursuant  
35 to paragraphs (4) and (5) of subdivision (d) of Section 37254. The  
36 information in this paragraph, which is to be included in the notice  
37 required pursuant to this subdivision, shall only be included in  
38 notices posted in classrooms in schools with grades 10 to 12,  
39 inclusive.

(F) The location at which to obtain a form to file a complaint in case of a shortage of complaint forms. Posting a notice downloadable from the Internet Web site of the department shall satisfy this posting requirement.

(2) In order to identify appropriate subjects of complaint, a notice shall be posted in each classroom of each charter school notifying parents, guardians, pupils, and teachers of both of the following:

(A) Pupils shall not be charged fees, including security deposits, or be required to purchase materials or equipment, to participate in a class or an extracurricular activity.

(B) The location at which to obtain a form to file a complaint in case of a shortage of complaint forms. Posting a notice downloadable from the Internet Web site of the department shall satisfy this posting requirement.

(g) (1) A local educational agency shall establish local policies and procedures, post notices, and implement this section on or before January 1, 2005.

(2) A school district, county office of education, and charter school shall establish local policies and procedures, post notices, and implement the provisions of this section regarding the imposition of pupil fees for participation in educational activities on or before January 1, 2012.

(h) For purposes of this section, the following definitions apply:

(1) "Educational activity" has the same meaning as specified in subdivision (a) of Section 49010.

(2) "Good repair" has the same meaning as specified in subdivision (d) of Section 17002.

(3) "Misassignment" means the placement of a certificated employee in a teaching or services position for which the employee does not hold a legally recognized certificate or credential or the placement of a certificated employee in a teaching or services position that the employee is not otherwise authorized by statute to hold.

(4) "Pupil fees" has the same meaning as specified in subdivision (b) of Section 49010.

(5) "Teacher vacancy" means a position to which a single designated certificated employee has not been assigned at the beginning of the year for an entire year or, if the position is for a one-semester course, a position to which a single designated

1 certificated employee has not been assigned at the beginning of a  
2 semester for an entire semester.

3 SEC. 3. Section 41020 of the Education Code is amended to  
4 read:

5 41020. (a) It is the intent of the Legislature to encourage sound  
6 fiscal management practices among local educational agencies for  
7 the most efficient and effective use of public funds for the  
8 education of children in California by strengthening fiscal  
9 accountability at the district, county, and state levels.

10 (b) (1) Not later than the first day of May of each fiscal year,  
11 each county superintendent of schools shall provide for an audit  
12 of all funds under his or her jurisdiction and control and the  
13 governing board of each local educational agency shall either  
14 provide for an audit of the books and accounts of the local  
15 educational agency, including an audit of income and expenditures  
16 by source of funds, or make arrangements with the county  
17 superintendent of schools having jurisdiction over the local  
18 educational agency to provide for that auditing.

19 (2) A contract to perform the audit of a local educational agency  
20 that has a disapproved budget or has received a negative  
21 certification on any budget or interim financial report during the  
22 current fiscal year or either of the two preceding fiscal years, or  
23 for which the county superintendent of schools has otherwise  
24 determined that a lack of going concern exists, is not valid unless  
25 approved by the responsible county superintendent of schools and  
26 the governing board.

27 (3) If the governing board of a local educational agency has not  
28 provided for an audit of the books and accounts of the local  
29 educational agency by April 1, the county superintendent of schools  
30 having jurisdiction over the local educational agency shall provide  
31 for the audit of each local educational agency.

32 (4) An audit conducted pursuant to this section shall comply  
33 fully with the Government Auditing Standards issued by the  
34 Comptroller General of the United States.

35 (5) For purposes of this section, "local educational agency" does  
36 not include community colleges.

37 (c) Each audit conducted in accordance with this section shall  
38 include all funds of the local educational agency, including the  
39 student body and cafeteria funds and accounts and any other funds  
40 under the control or jurisdiction of the local educational agency.

1 Each audit shall also include an audit of pupil attendance  
2 procedures.

3 (d) All audit reports for each fiscal year shall be developed and  
4 reported using a format established by the Controller after  
5 consultation with the Superintendent and the Director of Finance.

6 (e) (1) The cost of the audits provided for by the county  
7 superintendent of schools shall be paid from the county school  
8 service fund and the county superintendent of schools shall transfer  
9 the pro rata share of the cost chargeable to each district from district  
10 funds.

11 (2) The cost of the audit provided for by a governing board shall  
12 be paid from local educational agency funds. The audit of the funds  
13 under the jurisdiction and control of the county superintendent of  
14 schools shall be paid from the county school service fund.

15 (f) (1) The audits shall be made by a certified public accountant  
16 or a public accountant, licensed by the California Board of  
17 Accountancy, and selected by the local educational agency, as  
18 applicable, from a directory of certified public accountants and  
19 public accountants deemed by the Controller as qualified to conduct  
20 audits of local educational agencies, which shall be published by  
21 the Controller not later than December 31 of each year.

22 (2) Commencing with the 2003–04 fiscal year and except as  
23 provided in subdivision (d) of Section 41320.1, it is unlawful for  
24 a public accounting firm to provide audit services to a local  
25 educational agency if the lead audit partner, or coordinating audit  
26 partner, having primary responsibility for the audit, or the audit  
27 partner responsible for reviewing the audit, has performed audit  
28 services for that local educational agency in each of the six previous  
29 fiscal years. The Education Audits Appeal Panel may waive this  
30 requirement if the panel finds that no otherwise eligible auditor is  
31 available to perform the audit.

32 (3) It is the intent of the Legislature that, notwithstanding  
33 paragraph (2), the rotation within public accounting firms conform  
34 to provisions of the federal Sarbanes-Oxley Act of 2002 (P.L.  
35 107-204; 15 U.S.C. Sec. 7201 et seq.), and upon release of the  
36 report required by the act of the Comptroller General of the United  
37 States addressing the mandatory rotation of registered public  
38 accounting firms, the Legislature intends to reconsider the  
39 provisions of paragraph (2). In determining which certified public

1 accountants and public accountants shall be included in the  
2 directory, the Controller shall use the following criteria:

3 (A) The certified public accountants or public accountants shall  
4 be in good standing as certified by the Board of Accountancy.

5 (B) The certified public accountants or public accountants, as  
6 a result of a quality control review conducted by the Controller  
7 pursuant to Section 14504.2, shall not have been found to have  
8 conducted an audit in a manner constituting noncompliance with  
9 subdivision (a) of Section 14503.

10 (g) (1) The auditor's report shall include each of the following:

11 (A) A statement that the audit was conducted pursuant to  
12 standards and procedures developed in accordance with Chapter  
13 3 (commencing with Section 14500) of Part 9 of Division 1 of  
14 Title 1.

15 (B) A summary of audit exceptions and management  
16 improvement recommendations.

17 (C) Each audit of a local educational agency shall include an  
18 evaluation by the auditor on whether there is substantial doubt  
19 about the ability of the local educational agency to continue as a  
20 going concern for a reasonable period of time. This evaluation  
21 shall be based on the Statement of Auditing Standards (SAS) No.  
22 59, as issued by the AICPA regarding disclosure requirements  
23 relating to the ability of the entity to continue as a going concern.

24 (2) To the extent possible, a description of correction or plan  
25 of correction shall be incorporated in the audit report, describing  
26 the specific actions that are planned to be taken, or that have been  
27 taken, to correct the problem identified by the auditor. The  
28 descriptions of specific actions to be taken or that have been taken  
29 shall not solely consist of general comments such as "will  
30 implement," "accepted the recommendation," or "will discuss at  
31 a later date."

32 (h) Not later than December 15, a report of each local  
33 educational agency audit for the preceding fiscal year shall be filed  
34 with the county superintendent of schools of the county in which  
35 the local educational agency is located, the department, and the  
36 Controller. The Superintendent shall make any adjustments  
37 necessary in future apportionments of all state funds, to correct  
38 any audit exceptions revealed by those audit reports.

39 (i) (1) Commencing with the 2002–03 audit of local educational  
40 agencies pursuant to this section and subdivision (d) of Section

1 41320.1, each county superintendent of schools shall be responsible  
2 for reviewing the audit exceptions contained in an audit of a local  
3 educational agency under his or her jurisdiction related to  
4 attendance, inventory of equipment, internal control, and any  
5 miscellaneous items, and determining whether the exceptions have  
6 been either corrected or an acceptable plan of correction has been  
7 developed.

8 (2) Commencing with the 2004–05 audit of local educational  
9 agencies pursuant to this section and subdivision (d) of Section  
10 41320.1, each county superintendent of schools shall include in  
11 the review of audit exceptions performed pursuant to this  
12 subdivision those audit exceptions related to use of instructional  
13 materials program funds, teacher misassignments pursuant to  
14 Section 44258.9, information reported on the school accountability  
15 report card required pursuant to Section 33126 and shall determine  
16 whether the exceptions are either corrected or an acceptable plan  
17 of correction has been developed.

18 (3) (A) Commencing with the 2011–12 audit of local  
19 educational agencies pursuant to this section and subdivision (d)  
20 of Section 41320.1, each county superintendent of schools shall  
21 include in the review of audit exceptions performed pursuant to  
22 this subdivision those audit exceptions related to the imposition  
23 of pupil fees for participation in educational activities in violation  
24 of Section 49011 and Section 5 of Article IX of the California  
25 Constitution and shall determine whether the exceptions are either  
26 corrected or an acceptable plan of correction has been developed.

27 (B) An audit exception related to the imposition of these pupil  
28 fees shall not be deemed corrected until the school district, county  
29 office of education, or charter school has, at a minimum, fully  
30 reimbursed all affected parents, guardians, and pupils, with interest  
31 calculated pursuant to subparagraph (C). *and pupils.*

32 ~~(C) The amount of interest for reimbursement of unlawful pupil~~  
33 ~~fees shall commence accruing on the date the unlawful fee was~~  
34 ~~collected and shall be calculated to be an amount equal to the~~  
35 ~~interest that the money would have earned in the Pooled Money~~  
36 ~~Investment Account.~~

37 (j) Upon submission of the final audit report to the governing  
38 board of each local educational agency and subsequent receipt of  
39 the audit by the county superintendent of schools having

jurisdiction over the local educational agency, the county office of education shall do all of the following:

(1) Review audit exceptions related to attendance, inventory of equipment, internal control, and other miscellaneous exceptions. Attendance exceptions or issues shall include, but not be limited to, those related to revenue limits, adult education, and independent study.

(2) Review audit exceptions related to the imposition of pupil fees for participation in educational activities in violation of Section 49011 and Section 5 of Article IX of the California Constitution.

(3) If a description of the correction or plan of correction has not been provided as part of the audit required by this section, then the county superintendent of schools shall notify the local educational agency and request the governing board of the local educational agency to provide to the county superintendent of schools a description of the corrections or plan of correction by March 15.

(4) Review the description of correction or plan of correction and determine its adequacy. If the description of the correction or plan of correction is not adequate, the county superintendent of schools shall require the local educational agency to resubmit that portion of its response that is inadequate.

(k) Each county superintendent of schools shall certify to the Superintendent and the Controller, not later than May 15, that his or her staff has reviewed all audits of local educational agencies under his or her jurisdiction for the prior fiscal year, that all exceptions that the county superintendent was required to review were reviewed, and that all of those exceptions, except as otherwise noted in the certification, have been corrected by the local educational agency or that an acceptable plan of correction has been submitted to the county superintendent of schools. In addition, the county superintendent shall identify, by local educational agency, any attendance-related audit exception or exceptions involving state funds, and require the local educational agency to which the audit exceptions were directed to submit appropriate reporting forms for processing by the Superintendent.

(l) (1) In the audit of a local educational agency for a subsequent year, the auditor shall review the correction or plan or plans of correction submitted by the local educational agency to determine if the exceptions have been resolved. If not, the auditor shall

1 immediately notify the appropriate county office of education and  
2 the department and restate the exception in the audit report. After  
3 receiving that notification, the department shall either consult with  
4 the local educational agency to resolve the exception or require  
5 the county superintendent of schools to follow up with the local  
6 educational agency.

7 (2) If, in the audit of a school district, county office of education,  
8 or charter school for a subsequent year, the auditor determines that  
9 an exception related to the imposition of pupil fees for participation  
10 in educational activities in violation of Section 49011 and Section  
11 5 of Article IX of the California Constitution has not been  
12 corrected, or that the local educational agency has a new audit  
13 exception related to the imposition of pupil fees for participation  
14 in educational activities in violation of Section 49011 and Section  
15 5 of Article IX of the California Constitution, both of the following  
16 shall occur:

17 (A) The auditor shall disclose the unresolved or new audit  
18 exception, and the amount of withholding required pursuant to  
19 subparagraph (B), in the audit report.

20 (B) (i) The Superintendent shall, based on the audit year's actual  
21 expenditures, withhold 1 percent of the amount expended for  
22 administrative costs, which are expenditures coded to general  
23 administrative functions (codes 7000 to 7999, inclusive) pursuant  
24 to Procedure 325 of Section 300 of the California School  
25 Accounting Manual, from the next principal or general purpose  
26 apportionment to the school district, county office of education,  
27 or charter school until they reimburse all pupil fees collected in  
28 violation of Section 49011 and Section 5 of Article IX of the  
29 California Constitution, ~~with applicable interest, as provided for~~  
30 ~~in subparagraph (C) of paragraph (3) of subdivision (i).~~

31 (ii) If the Superintendent and auditor are unable to calculate 1  
32 percent of the administrative costs of a charter school, or if the  
33 amount of pupil fees for participation in educational activities  
34 collected by the charter school is greater than the 1-percent  
35 administrative fee, then an amount equal to the amount of pupil  
36 fees for participation in educational activities collected, multiplied  
37 by 10, shall be withheld by the Superintendent until the charter  
38 school reimburses all unlawful pupil fees collected ~~with applicable~~  
39 ~~interest, as provided for in subparagraph (C) of paragraph (3) of~~  
40 ~~subdivision (i).~~



1 (iii) Funds withheld pursuant to this subparagraph shall be held  
2 in trust by the Superintendent until he or she determines that the  
3 school district, county office of education, or charter school has  
4 reimbursed all unlawful pupil fees collected ~~with applicable~~  
5 ~~interest, as provided for in subparagraph (C) of paragraph (3) of~~  
6 ~~subdivision (i).~~

7 (m) (1) The Superintendent shall be responsible for ensuring  
8 that local educational agencies have either corrected or developed  
9 plans of correction for any one or more of the following:

10 (A) All federal and state compliance audit exceptions identified  
11 in the audit.

12 (B) Any exceptions that the county superintendent certifies as  
13 of May 15 have not been corrected.

14 (C) Any repeat audit exceptions that are not assigned to a county  
15 superintendent to correct.

16 (2) In addition, the Superintendent shall be responsible for  
17 ensuring that county superintendents of schools and each county  
18 board of education that serves as the governing board of a local  
19 educational agency either correct all audit exceptions identified in  
20 the audits of county superintendents of schools and of the local  
21 educational agencies for which the county boards of education  
22 serve as the governing boards or develop acceptable plans of  
23 correction for those exceptions.

24 (3) The Superintendent shall report annually to the Controller  
25 on his or her actions to ensure that school districts, county  
26 superintendents of schools, and each county board of education  
27 that serves as the governing board of a school district have either  
28 corrected or developed plans of correction for any of the exceptions  
29 noted pursuant to paragraph (1).

30 (n) To facilitate correction of the exceptions identified by the  
31 audits issued pursuant to this section, commencing with 2002–03  
32 audits pursuant to this section, the Controller shall require auditors  
33 to categorize audit exceptions in each audit report in a manner that  
34 will make it clear to both the county superintendent of schools and  
35 the Superintendent which exceptions they are responsible for  
36 ensuring the correction of by a local educational agency. In  
37 addition, the Controller annually shall select a sampling of county  
38 superintendents of schools and perform a followup of the audit  
39 resolution process of those county superintendents of schools and

1 report the results of that followup to the Superintendent and the  
2 county superintendents of schools that were reviewed.

3 (o) County superintendents of schools shall adjust subsequent  
4 local property tax requirements to correct audit exceptions relating  
5 to local educational agency tax rates and tax revenues.

6 (p) If a governing board or county superintendent of schools  
7 fails or is unable to make satisfactory arrangements for the audit  
8 pursuant to this section, the Controller shall make arrangements  
9 for the audit and the cost of the audit shall be paid from local  
10 educational agency funds or the county school service fund, as the  
11 case may be.

12 (q) Audits of regional occupational centers and programs are  
13 subject to the provisions of this section.

14 (r) This section does not authorize examination of, or reports  
15 on, the curriculum used or provided for in any local educational  
16 agency.

17 (s) Notwithstanding any other provision of law, a nonauditing,  
18 management, or other consulting service to be provided to a local  
19 educational agency by a certified public accounting firm while the  
20 certified public accounting firm is performing an audit of the  
21 agency pursuant to this section must be in accord with Government  
22 Accounting Standards, Amendment No. 3, as published by the  
23 United States General Accounting Office.

24 SEC. 4. Article 5.5 (commencing with Section 49010) is added  
25 to Chapter 6 of Part 27 of Division 4 of Title 2 of the Education  
26 Code, to read:

27  
28 Article 5.5. Pupil Fees  
29

30 49010. For purposes of this article, the following terms have  
31 the following meanings:

32 (a) "Educational activity" means an activity that constitutes an  
33 integral fundamental part of elementary and secondary education,  
34 or that amounts to a necessary element of a school activity,  
35 including, but not limited to, curricular and extracurricular  
36 activities.

37 (b) "Pupil fee" means a fee, deposit, or other charge imposed  
38 on pupils, or a pupil's parents or guardians, in violation of Section  
39 49011 and Section 5 of Article IX of the California Constitution,  
40 which require educational activities to be provided free of charge

1 to all pupils without regard to their families' ability or willingness  
2 to pay fees or request special waivers, as provided for in Hartzell  
3 v. Connell (1984) 35 Cal.3d 899. A pupil fee includes, but is not  
4 limited to, all of the following:

5 (1) A fee charged to a pupil as a condition for registering for  
6 school or classes, or as a condition for participation in a class or  
7 an extracurricular activity, regardless of whether the class or  
8 activity is elective or compulsory, or is for credit.

9 (2) A security deposit, or other payment, that a pupil is required  
10 to make to obtain a lock, locker, book, class apparatus, musical  
11 instrument, uniform, or other materials or equipment.

12 (3) A purchase that a pupil is required to make to obtain  
13 materials, supplies, equipment, or uniforms associated with an  
14 educational activity.

15 49011. (a) A school district, school, ~~or other entity working~~  
16 ~~under the supervision of, or in coordination with, a district or~~  
17 ~~school~~ *charter school, or county office of education* shall not  
18 impose a pupil fee for participation in educational activities.

19 (b) All of the following requirements apply to the prohibition  
20 identified in subdivision (a):

21 (1) All supplies, materials, and equipment needed to participate  
22 in educational activities shall be provided to pupils free of charge.

23 (2) A fee waiver policy shall not make a pupil fee permissible.

24 (3) School districts and schools shall not establish a two-tier  
25 educational system by requiring a minimal educational standard  
26 and also offering a second, higher educational standard that pupils  
27 may only obtain through payment of a fee or purchase of additional  
28 supplies that the school district or school does not provide.

29 (4) A school district or school shall not offer course credit or  
30 privileges related to educational activities in exchange for money  
31 or donations of goods or services from a pupil or a pupil's parents  
32 or guardians, and a school district or school shall not remove course  
33 credit or privileges related to educational activities, or otherwise  
34 discriminate against a pupil, because the pupil or the pupil's parents  
35 or guardians did not or will not provide money or donations of  
36 goods or services to the school district or school.

37 (c) This article shall not be interpreted to prohibit solicitation  
38 of voluntary donations of funds or property, voluntary participation  
39 in fundraising activities, or school districts and schools from

1 providing pupils prizes or other recognition for voluntarily  
2 participating in fundraising activities.

3 (d) This article applies to all public schools, including, but not  
4 limited to, charter schools and alternative schools.

5 (e) This article is declarative of existing law and shall not be  
6 interpreted to prohibit a school district or school from imposing a  
7 fee, deposit, or other charge otherwise allowed by law.

8 49012. (a) Commencing with the 2011–12 fiscal year, ~~the~~  
9 ~~governing board or body of a school district, county office of~~  
10 ~~education, or charter school shall take both of the following actions:~~

11 (1) ~~(A) The governing board or body shall hold a public hearing~~  
12 ~~or hearings for which the governing board or body shall encourage~~  
13 ~~participation by parents, teachers, and members of the community~~  
14 ~~interested in the affairs of the school district, county office of~~  
15 ~~education, or charter school, and shall make a determination,~~  
16 ~~through a resolution, based on evidence gathered through a review~~  
17 ~~of the policies and practices at all schools within its jurisdiction,~~  
18 ~~as to whether pupil fees for a superintendent of a school district,~~  
19 ~~county superintendent of schools, or governing body of a charter~~  
20 ~~school shall determine whether pupil fees for participation in~~  
21 ~~educational activities have been charged, or are being charged,~~  
22 ~~within its jurisdiction in the current fiscal year in violation of~~  
23 ~~Section 49011 and Section 5 of Article IX of the California~~  
24 ~~Constitution.~~

25 *(b) If a superintendent of a school district, county superintendent*  
26 *of schools, or governing body of a charter school determines that*  
27 *an unlawful pupil fee was, or is being, charged, it shall present*  
28 *this determination at a public hearing of the governing board or*  
29 *body of the applicable school district, county office of education,*  
30 *or charter school at which the governing board or body shall*  
31 *identify the nature of the violation and take action to comply with*  
32 *the repayment requirements specified in subdivision (c) of Section*  
33 *35186.*

34 ~~(B)~~  
35 (c) The public hearing or hearings held pursuant to  
36 ~~subparagraph (A) shall meet both~~ subdivision (b) shall meet all of  
37 the following requirements:

38 (i)  
39 (I) Be conducted during a regularly scheduled meeting of the  
40 governing board held pursuant to Article 3 (commencing with

1 Section 35140) of Chapter 2 of Part 21 of Division 3 or Article 1  
2 (commencing with Section 1000) of Chapter 1 of Part 2 of Division  
3 1 of Title 1, or, in the case of a charter school, during a meeting  
4 of the governing body of the charter school where the parent or  
5 guardian of each pupil enrolled in the charter school has been  
6 notified prior to the meeting that the governing body will be  
7 ~~making a determination pursuant to subparagraph (A) taking action~~  
8 *pursuant to subdivision (b).*

9 (ii)

10 (2) Take place on or before the end of the eighth week after the  
11 first day pupils attend school for that school year. For schools that  
12 operate on a multitrack, year-round calendar, the hearing or  
13 hearings shall be held on or before the end of the eighth week after  
14 the first day pupils attend school for that school year on any tracks  
15 that begin a school year in August or September.

16 ~~(2) If the governing board or body determines that a pupil fee~~  
17 ~~for participation in educational activities was charged, the~~  
18 ~~governing board or body shall describe, in the resolution, the pupil~~  
19 ~~fees charged, including the nature of each fee, the number of pupils~~  
20 ~~affected by each fee, and when all affected pupils, parents, or~~  
21 ~~guardians received full reimbursement with interest, as calculated~~  
22 ~~in subparagraph (C) of paragraph (3) of subdivision (i) of Section~~  
23 ~~41020. If pupil fees have not been fully reimbursed by the day of~~  
24 ~~the public hearing, the governing board or body shall set forth in~~  
25 ~~the resolution the actions that will be taken to ensure that all~~  
26 ~~affected pupils, parents, or guardians receive full reimbursements~~  
27 ~~with interest within 10 weeks of the beginning of the school year~~  
28 ~~in which the determination is made.~~

29 ~~(b) The governing board or body shall provide 10 days' notice~~  
30 ~~of the public hearing or hearings held pursuant to subdivision (a).~~  
31 ~~The notice shall contain the time, place, and purpose of the hearing~~  
32 ~~and shall be posted at the charter school or in three public places~~  
33 ~~in the school district. The hearing shall be held at a time that will~~  
34 ~~encourage the attendance of teachers and parents and guardians~~  
35 ~~of pupils who attend the school or schools within the jurisdiction~~  
36 ~~of the governing board or body and shall not take place during, or~~  
37 ~~immediately following, school hours.~~

38 (e)

39 (3) For the 2011–12 fiscal year, the public hearing or hearings  
40 held pursuant to subdivision ~~(a)~~ (b) shall take place as provided

1 ~~for in subparagraph (B) of paragraph (1) of subdivision (a), or~~  
2 within eight weeks from the date of the enactment of this section;  
3 ~~whichever is later.~~

4 SEC. 5. Section 905 of the Government Code is amended to  
5 read:

6 905. There shall be presented in accordance with Chapter 1  
7 (commencing with Section 900) and Chapter 2 (commencing with  
8 Section 910) all claims for money or damages against local public  
9 entities except any of the following:

10 (a) Claims under the Revenue and Taxation Code or other statute  
11 prescribing procedures for the refund, rebate, exemption,  
12 cancellation, amendment, modification, or adjustment of any tax,  
13 assessment, fee, or charge or any portion thereof, or of any  
14 penalties, costs, or charges related thereto.

15 (b) Claims in connection with which the filing of a notice of  
16 lien, statement of claim, or stop notice is required under any law  
17 relating to liens of mechanics, laborers, or materialmen.

18 (c) Claims by public employees for fees, salaries, wages,  
19 mileage, or other expenses and allowances.

20 (d) Claims for which the workers' compensation authorized by  
21 Division 4 (commencing with Section 3200) of the Labor Code is  
22 the exclusive remedy.

23 (e) Applications or claims for any form of public assistance  
24 under the Welfare and Institutions Code or other provisions of law  
25 relating to public assistance programs, and claims for goods,  
26 services, provisions, or other assistance rendered for or on behalf  
27 of any recipient of any form of public assistance.

28 (f) Applications or claims for money or benefits under any public  
29 retirement or pension system.

30 (g) Claims for principal or interest upon any bonds, notes,  
31 warrants, or other evidences of indebtedness.

32 (h) Claims that relate to a special assessment constituting a  
33 specific lien against the property assessed and that are payable  
34 from the proceeds of the assessment, by offset of a claim for  
35 damages against it or by delivery of any warrant or bonds  
36 representing it.

37 (i) Claims by the state or by a state department or agency or by  
38 another local public entity or by a judicial branch entity.

39 (j) Claims arising under any provision of the Unemployment  
40 Insurance Code, including, but not limited to, claims for money

1 or benefits, or for refunds or credits of employer or worker  
2 contributions, penalties, or interest, or for refunds to workers of  
3 deductions from wages in excess of the amount prescribed.

4 (k) Claims for the recovery of penalties or forfeitures made  
5 pursuant to Article 1 (commencing with Section 1720) of Chapter  
6 1 of Part 7 of Division 2 of the Labor Code.

7 (l) Claims governed by the Pedestrian Mall Law of 1960 (Part  
8 1 (commencing with Section 11000) of Division 13 of the Streets  
9 and Highways Code).

10 (m) Claims made pursuant to Section 340.1 of the Code of Civil  
11 Procedure for the recovery of damages suffered as a result of  
12 childhood sexual abuse. This subdivision shall apply only to claims  
13 arising out of conduct occurring on or after January 1, 2009.

14 (n) Claims made pursuant to Section 701.820 of the Code of  
15 Civil Procedure for the recovery of money pursuant to Section  
16 26680.

17 (o) Claims made pursuant to Section 35186 of the Education  
18 Code for reimbursement of pupil fees for participation in  
19 educational activities.

20 SEC. 6. If the Commission on State Mandates determines that  
21 this act contains costs mandated by the state, reimbursement to  
22 local agencies and school districts for those costs shall be made  
23 pursuant to Part 7 (commencing with Section 17500) of Division  
24 4 of Title 2 of the Government Code.